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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,917	08/16/2001	John E. Gunderman	20386/305	2246
7590 10/21/2003			EXAMINER	
Oppenheimer Wolff & Donnelly LLP Suite 3300 45 South Seventh Street Minneapolis, MN 55402-1609			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	
			DATE MAILED: 10/21/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary    Examiner			$\sim$				
### Define Action Summary    Fine MAILING DATE of this communication appears on the cover sheet with the correspondence address = Period for Reply   A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.   A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.   The Part 3X (e) MONTHS from the mailing date of this communication.   The period corrected prior of the promising date of this communication.   The period corrected by the Office the site has there were into a fine the mailing date of this communication.   The period corrected by the Office the thin there enotine after the mailing date of this communication.   The period corrected by the Office the thin there enotine after the mailing date of this communication to become ABANDONED (38 tu.S.C. § 133).   Any reply received by the Office the than there enotine after the mailing date of this communication.   Any reply received by the Office the thin there enotine after the mailing date of this communication.   Any reply received by the Office the thin there enotine after the mailing date of this communication.   Any reply received by the Office the thin there enotine after the mailing date of this communication.   Any reply received by the Office them there enotine after the mailing date of this communication.   Any reply received by the Office that the mailing date of this communication.   Any reply received by the Office and a state of the provision is in condition in on-final.		Application No.	Applicant(s)				
Juffrey L. Gelliner   3643		09/930,917	GUNDERMAN ET AL.				
- The MAILING DATE of this communication appears on the cover sheet with the correspondence address - Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  - after \$30.69 MONTHS from the mailing date of this communication.  - if the period correspondence is less than thirty (300, aye, a regly which the statutory minimum of thirty (300, days, will be considered timely.  - if the period correspondence is less than thirty (300, ayes, a regly which the statutory minimum of thirty (300, days, will be considered timely.  - if the period correspondence is less than thirty (300, ayes, a regly which the statutory minimum of thirty (300, days, will be considered timely.  - if the period correspondence is less than there mains date in the surface in the s	t was	Examiner	Art Unit				
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MALLING DATE OF THIS COMMUNICATION.  after 32x (b) MONTHS from the malling date of this communication.  If the period for reply specified solves, the maniform shallong period will expire and will be considered timely.  If NO period for reply specified solves, the maintainer period will apply and will expire 35x (b) MONTHS from the mailting date of this communication.  If NO period for reply specified solves, the maintainer period will apply and will expire 35x (b) MONTHS from the mainting date of this communication, and the mainting period will apply and will expire 35x (b) MONTHS from the mainting date of this communication, even if timely filled, may reduce any same plant term significant in the mainting date of this communication, even if timely filled, may reduce any same plant term significant in the mainting date of this communication, even if timely filled, may reduce any same plant term significant in the mainting date of this communication, even if timely filled, may reduce any same plant term significant in the mainting date of this communication, even if timely filled, may reduce any same plant term significant in the mainting date of this communication.  Application is application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 c.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s) 1-5,7-10.12.14-16.23 and 25 is/are pending in the application.  4) Claim(s) 1-5,7-10.12.14-16.23 and 25 is/are allowed.  6) Claim(s) 2.5 is/are objected to.  8) Claim(s) 2.5 is/are objected to.  8) Claim(s) 3.5 is/are objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing of filled on is/are: a) accepted or b) objected to by the Examiner.  If approved, corrected drawings are required in reply to this Office action.  12) The proposed drawing correcti		<u> </u>	<u> </u>				
THE MAILING DATE OF THIS COMMUNICATION.  Extensions of time may be valiable under the provisions of 37 CFR 1 136(a). In no event, however, may a reply be timely filed after SIX (s) MONTHS from the nating date of this communication.  Falve to reply vision the set or extended periods of the communication and the communication of the provision of the set or extended periods of reply visit by statutory provided agoly within the satisticty provided and the communication.  Falve to reply vision the set or extended periods for reply vill by statute, cause the application to become ASANDONED (38 U.S.C. § 133).  Any reply received by the Office the that there mority after the mailing date of this communication, even if timely fled, may reduce any search plant time adjustment. Set 97 CFR 1.794(b).  Status  1) Responsive to communication(s) filed on 28 July 2003  2a) This action is FINAL.  2b) This action is FINAL.  2c) This action is FINAL.  2c) This action is FINAL.  2c) Claim(s) 1-5.7-10.12.14-16.23 and 25 is/are pending in the application.  4a) Of the above claim(s) is/are withdrawn from consideration.  5b) Claim(s) 1-5.7-10.12.14-16.23 and 25 is/are pending in the application.  4a) Of the above claim(s) is/are allowed.  6c) Claim(s) 23 is/are rejected.  7b) Claim(s) is/are objected to by the Examiner.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Application Papers  9) The specification is objected to by the Examiner.  10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  4pplication Papers  9) The proposed drawing correction filed on is accepted or b) objected to by the Examiner.  4pplication Papers  11) The proposed drawing sare required in reply to this office action.  12) The orather office active is objected to by the Examiner.  12) The proposed drawing correction filed on interply to this office action.  13) All b) Some *c) None of:  1. Certified copies of the pri							
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#### **DETAILED ACTION**

### Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 23 is rejected under 35 U.S.C. 102(b) as being anticipated by Piglia (US 2,141,484).

As to Claim 23, Piglia discloses a support member (13 of Fig. 3) for a plant support apparatus (Fig. 3) comprising at least one leg (region around leadline of 11 in Fig. 3) attachable to an upper ring and lower ring (17 of Fig. 3; col. 2 lines 2-5), the leg adapted to support the rings (Fig. 3) and engage the ground (region around 15 of Fig. 3); the at least one leg comprising a ledge (15 of Fig. 3) shaped so as to permit application of a downward force by a plant support user (inherent in Fig. 3) to insert a portion of the plant support into the ground; wherein the ledge is defined by a bend in the at least leg (shown between 16 and 15 of Fig. 3), the ledge located below the position where the lower ring attaches to the at least one leg (Fig. 3); where in the at least one leg is an elongate U-shaped member (13 of Fig. 3; "V-shaped member" of col. 1 line 50; Examiner considers Piglia's V-shaped member to be U-shaped) comprising a closed end (region around 14 of Fig. 3) and an open end (region around 15 of Fig. 3) defined by two portions of the U-shaped member (Fig. 3); a portion of the upper ring adapted to be attached proximate the closed end of the at least one leg (Fig. 3) such that a loop (region around 14 of Fig. 3); and,

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wherein the loop is positioned in a different plane as the two portions of the U-shaped member at the open end (defining the planes as horizontal at 15 and 14 of Fig. 3).

### Allowable Subject Matter

Claims 1-5, 7-10, 12, 14-16, and 25 are allowed over the art of record.

## Response to Arguments

As regard to Claim 23, Applicant's arguments filed 28 July 2003 have been fully considered but they are not persuasive. Applicant's arguments are (1) Piglia does not disclose a plant support but does disclose a plant cover (Remarks page 8 4<sup>th</sup> para.); Piglia does not disclose a ledge which would permit application of a downward force by a plant support user to insert a portion of the plant support into the ground (Remarks page 8, last para. and page 9, 1<sup>st</sup> para.); and, (3) the purpose of Piglia is not to support a plant container (Remarks page 9 1<sup>st</sup> complete para.).

As to argument (1), Examiner considers the device of Piglia to be capable of being a plant support apparatus regardless of the inventors intended and disclosed use for the device.

As to argument (2), Examiner considers element (15) of Piglia to be a ledge and it is capable with the proper soil (say sandy soil) to be forced into the ground by a user when stepping on the ledge.

As to argument (3), Examiner considers the device of Piglia to disclose the language recited in Applicant's Claim 23 regardless of Piglia's suggested use.

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#### Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

Jeffrey L. Gellner

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